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(1)

Supreme Court, U.S.
FILED

081220 JAN 27 2009

OFFICE OF THE CLERK

Docket No: _____

United States Supreme Court

Glenn Henderson
Plaintiff

v.

Dr. Robertson and Highsmith-Rainey
Memorial Hospital

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth
District

Petition for Writ of Certiorari

Glenn Henderson, Plaintiff pro se
5952 Cliffdale Rd.
Fayetteville, NC 28314
910-867-4931

Questions

1. Can a statute of limitations be tolled if a person was injured as a 5 year old child and was not aware of injury until many years later and many years after age 18?
2. Have there been other cases and situations where a court or courts have tolled the statute of limitations or allowed similar cases to be heard in court?
3. Does such a statute of limitations deny due process, equal treatment, and the right to petition, including the right to sue?

Citations

The District Court stated "the statute of limitations for personal injury complaints is generally two years."

The District Court stated I had "alleged no basis that would allow" me "to wait another thirty years to bring these claims."

The Appeals Court and stated the action is time-barred under N.C. Gen. Stat. Section 1-15(c) and Cal. Civ. Proc. Section 340.5 and affirmed.

Basis for Jurisdiction

Date appeal affirmed: Sep 09, 2008
Date of order related to rehearing: Oct 29, 2008
This Court should have jurisdiction because the case was reviewed by the Federal Ninth Circuit Court of Appeals.
Statutory Provision: Petition for Writ of Certiorari may be filed after review by a federal court of appeals.

Constitutional Provisions and Statutes

The First Amendment of the Constitution grants the right to petition.
The Constitution grants equal protection under the Fourteenth Amendment.
The Constitution grants due process under the Fifth and Fourteenth Amendments.

Statement of the Case and Points

1. The injury happened when I was about 5 years old. I filed the case about malpractice and child abuse at a hospital. I was taken into an operating room. I was kicking and thrashing and screaming. I was terrified. It may not seem so terrifying to an adult, but I was a small child and thought I was going to be hurt badly. A workers' compensation doctor thought I feared for my life. I was not aware of the injury until about 45 years after the incident. Within a year after I realized the harm done, I filed the case. I did not "wait" to file the case; the District Court said or implied that I did. I had a memory of the incident but was not aware of the damage done. The incident gave me post traumatic stress syndrome and anxiety disorder. I also developed depression. I have gone through my life constantly being afraid of possible harm. I feel I have no or little control over what happens to me and that I cannot protect myself adequately, even though laws exist that are supposed to help protect me and everyone. I became the quiet type, as I put it. I have appealed to this court before because of employment issues and other related issues. Sometimes, someone tries to take advantage of someone who appears vulnerable. I cannot find a job, even though I have an MBA. I feel humiliated because I cannot protect myself, cannot find a job, and feel I am not

normal. I learned about the post traumatic stress after speaking with a workers' compensation doctor.

2. The District Court stated that "generally" the statute of limitations begins 1 year after age 18 for such cases. That implies that there are exceptions. Is my case an exception? I have heard of the statute of limitations being tolled for child sex abuse cases. I remember reading about people being harmed by government experiments or by radiation, and I believe they had cases or were compensated. The hospital where my incident happened was a county hospital and is still one but at a different and nearby location in the same town, which is where I now live. They could at least help me with counseling.

3. It does not seem fair or constitutional to never have a chance at remedy. I was not aware of the damage done until many years after the incident. I have the right to seek a new law or change in an old law.

Basis of jurisdiction of first court

The United States District Court had jurisdiction because of diversity of citizenship. The incident happened in North Carolina, and I was living in California when I filed the case.

Argument for review on a Writ of Certiorari

I did not get my First Amendment right to petition. If similar cases have been able to proceed in court, then I did not get equal protection granted under the Fourteenth Amendment. If the District and Appeals Courts erred, then I did not get due process.

Attorneys of Record

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Appendix

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
NOV 06 2008

GLENN C. HENDERSON, No. 05-56553

Plaintiff-Appellant, DC # CV-05-

V. 05659-ABC

ROBERTSON, Dr.; HIGHSMITH RAINEY MEMORIAL HOSPITAL, Central California (Los Angeles)

Defendants-Appellees ORDER

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges

The petition for panel rehearing is denied.

No further filings will be accepted in this closed case.

NOT FOR PUBLICATION
UNITED STATES COURT OF APEEALS
FOR THE NINTH CIRCUIT

GLENN HENDERSON
Plaintiff-Appellant
v.
ROBERTSON, Dr.: et al.
Defendants-Appellees

No. 05-56553
D.C. No. CV-05-05659-ABC

MEMORANDUM*

Appeal from the United States District Court
For the Central District of California
Audrey B. Collins, District Judge, Presiding
Submitted August 26, 2008**

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges

Glenn Henderson appeals pro se from the district court's order dismissing his diversity action alleging medical malpractice in 1959 or 1960. We have jurisdiction pursuant to 28 U.S.C. Section 1291. We review de novo, *Fanucchi & Limi Farms V, United Agri Products*, 414 F.3d 1075, 1080 (9th Cir. 2005), and we affirm.

The district court properly dismissed Henderson's action as time-barred because, whether N.C. Gen. Stat. Section 1-15(c) applies, or Cal. Civ. Proc. Section 340.5 applies, according to his own pleadings, Henderson's action accrued more than the requisite period before he filed his complaint.

AFFIRMED

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.
**The panel unanimously finds this case suitable for decision without oral argument.

Filed
Sep –5 2005
Entered
Sep 8 2005

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GLENN HENDERSON, CV 05-5459 ABC (FMOX)

Plaintiff,

v.

DR. ROBERSTON AND HIGHSMITH-RAINEY MEMORIAL HOSPITAL,

Defendants

ORDER DISMISSING PLAINTIFF'S COMPLAINT

On August 3, 2005, Glen Henderson (Plaintiff"), who is appearing pro se, filed a complaint in this Court against Highsmith-Rainey Memorial Hospital and an individual identified only as "Dr. Robertson" (collectively defendants"). On August 12, 2005, the court issued an Order to Show Cause ("OSC") why this case should not be dismissed for 1) failure to set forth facts supporting subject matter jurisdiction and 2) expiration of the applicable statute of limitations. Plaintiff filed a response to the Court's OSC on August 22, 2005. Based on the expiration of the statute of limitations, as well as Plaintiff's failure to demonstrate that this Court has subject

matter jurisdiction over this matter, the Court herby DISMISSES Plaintiff's Complaint WITH PREJUDICE.

In the instant case, Plaintiff brings claims of medical malpractice and child abuse and harm, arising from a surgery performed on Plaintiff when he was five years old, in 1959 or 1960. Plaintiff's complaint contained no allegations which would allow this Court to exercise jurisdiction. See Fed. R. Civ. P. 8(a). In response to this Court's OSC, Plaintiff asserts that this Court has jurisdiction over this matter on the basis of diversity of citizenship, under 28 U.S.C. Section 1332. However, even to the extent that Plaintiff may be able to establish jurisdiction in this case, Plaintiff has alleged no facts, either in his complaint or in his response to the OSC, that would allow his claims to survive a statute of limitations challenge. Even if the statute of limitations was tolled until Plaintiff reached age eighteen in approximately 1973, see Cal. Civ. Pro. Section 352, Plaintiff has alleged no basis that would allow him to wait another thirty years to bring these claims. Accordingly, Plaintiff's claims are barred by the statute of limitations, and is therefore dismissed with prejudice.

SO ORDERED
Dated: Sept. 6, 2005

_____
AUDREY B. COLLINS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No. CV 05-5659 ABC (FMOx) Date August 12, 2005

Title Glenn Henderson v. Dr. Robertson, et al.

Present: The Honorable Audrey B. Collins

Daphne Alex	None	N/A
Deputy Clerk	Court Reporter/Recorder	

Tape No.

Attorneys Present for Plaintiffs
None

Attorneys Present for Defendants
None

Proceedings: Order to show cause re: jurisdiction (In Chambers)

On August 3, 2005, Plaintiff Glenn Henderson ("Plaintiff"), in pro per, filed the above referenced action against Defendants "Dr. Robertson." And Highsmith-Rainey Memorial Hospital ("Defendants"), alleging child abuse and harm, and medical malpractice. Plaintiff's complaint contains no allegations which would allow this Court to exercise jurisdiction. See Fed. R. Civ. P. 8(a) (the complaint must contain "a short and plain statement of the grounds upon which the court's jurisdiction depends").

Federal courts have original jurisdiction under 28 U.S.C. Section 1332 where a civil action is between citizens in different states, and the amount of controversy exceeds $75,000. Thus, for any action filed on the basis

of diversity jurisdiction, the plaintiff must allege the citizenship of each party as well as the amount in controversy. Here, the Court finds that Plaintiff has failed to establish that this Court has diversity jurisdiction over this matter. Further, Plaintiff should note that, in the case of a corporate defendant, citizenship includes both the state of incorporation and the principal place of business. See 28 U.S.C. Section 1332(c)(1). The burden is on Plaintiff to supply, in the Complaint, all of the facts from which the Court can gauge whether jurisdiction is proper.

Further, the allegations in Plaintiff's complaint are based on a surgery that occurred in 1960 or 1959, when Plaintiff was five years old. (See Complaint at 1.) The statute of limitations for personal injury complaints is generally two years from the time the act is committed. See Cal. Civ. Pro. Section 335.1; see also Cal Civ. Pro. Section 340.5 (one year statute of limitations for medical malpractice from when Plaintiff discovers the injury). Thus, even if the statute of limitations was tolled until Plaintiff reached age eighteen in 1973, see Cal. Civ. Pro. Section 352, these claims would have to be brought no later than 1975. Plaintiff's complaint includes no allegations which would allow him to bring these claims thirty years later.

Accordingly, Plaintiff is hereby ORDERED to SHOW CAUSE in writing no later than

Wednesday, August 24, 2005 why this Court should not dismiss this action for 1) lack of jurisdiction and 2) statute of limitations. The form of response may be either an amended complaint in which the above defects are corrected, or a separate writing. The failure to file a response by the deadline ordered herein shall be deemed Plaintiff's consent to dismissal of this action for lack of subject matter jurisdiction and for expiration of the statute of limitations. In that case, the Court shall dismiss this action, with prejudice, without further notice.[1]

IT IS SO ORDERED.

[1]Plaintiff is also reminded of the admonition of the Honorable Dean Pregerson, in his Order of July 19, 2005, related to a previous complaint filed by Plaintiff, that any further claims brought in federal court that are unsupported by law or fact may expose Plaintiff to sanctions, including monetary penalties.

Filed
Clerk U.S. District Court
Jul 19 2005
Central District of California
By Deputy

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GLENN HENDERSON, Plaintiff,

v.

SONY PICTURES ENTERTAINMENT; et al. Defendants.

Case No. CV 04-08748 DDP (SSx)

ORDER DENYING MOTION FOR SANCTIONS

[Motion filed on 6/6/05]

Entered
Clerk U.S. District Court
Jul 20 2005
Central District of California
By Deputy

This matter is before the Court on the defendants' motion for sanctions against the plaintiff. After reviewing the papers submitted by both parties, the Court finds this matter appropriate for decision without a hearing and denies the defendants' motion.

I. Background

Sony Pictures Entertainment ("Sony") hired pro de plaintiff Glenn Henderson in August 1998 as a cash allocation clerk. Approximately three years later he was fired.

In June 2002, he filed his first complaint against Sony in state court, alleging age discrimination and retaliation. The parties later reached a settlement agreement ("Settlement Agreement") and on August 22, 2002, Henderson moved to dismiss his complaint. On August 26, 2002, the state court granted Henderson's request and dismissed the action with prejudice.

On December 1, 2001, Henderson filed a second complaint ("2003 Complaint") in state court. In addition to Sony, the complaint named Sony employees John Calley, Raymond Smith, and Mary Burke as defendants. The defendants later removed the case to federal court. The plaintiff's 2003 Complaint alleged civil rights and First Amendment violations, conspiracy, discrimination, retaliation, whistle blower retaliation, harassment. Fraud, defamation, insult, Freedom of Information Act ("FOIA") violations, threats, possible blackmail or extortion, breach of contract and "cover up of wrongs." (4/12/04 Order Granting Defendants' Motion to Dismiss in cases CV 04-1346 and CV 03-8782 at 2.) These claims related to the defendants' alleged activities since the Settlement Agreement. (Id. at 6.) The Honorable Judge Audrey Collins dismissed the federal claims with prejudice and the state law claims without prejudice. On June 22, 2005, the Ninth Circuit affirmed the dismissal.

The plaintiff filed another complaint, from which this motion for sanctions arises, in federal court on October 19, 2004. The named

defendants included Sony: Beth Burke, Kim Russo, employees of Sony; Paul, Hastings, Janofsky & Walker LLP)"Paul Hastings"), which represented the defendants named in the 2003 Complaint; Paul Hastings employees Amy Dow, Holly Lake, and James Zapp; Mellon Bank ("Mellon"); and a Mellon Bank employee named "Connie." The plaintiff alleged that he was not paid workers' compensation benefits because of Sony's Interference and that he suffered discrimination, harassment, retaliation, and whistle blower retaliation. (Id. at 3-5). He also claimed that Sony and its employees prevented him from obtaining a new job by refusing to provide him with a positive recommendation. He alleged that the defendants' unlawful conduct included breach of contract, conspiracy, fraud and defamation. (Id. at 6-8.) The plaintiff sought to have the 2002 Settlement Agreement set aside on grounds that he entered that agreement under duress. Additionally, he alleged that Mellon's conduct led to his termination at Sony and constituted fraud, defamation, discrimination and harassment.

The plaintiff did not attach a right to sue letter from the Equal Opportunity Commission ("EEOC") or the California Department of Fair Employment and Housing ("DFEH").

On June 20, 2005, on the defendants' motion, this Court determined that some of the plaintiff's claims were barred by the Settlement Agreement or were duplicative of

the 2003 Complaint. These claims were dismissed with prejudice. The federal claims against Mellon and its employee were also dismissed with prejudice. All other federal and state law claims were dismissed without prejudice.

Sony, Paul Hastings, Mellon, and their employees brought this motion for sanctions pursuant to Federal Rule of Civil Procedure 11. They seek $3,750.00 in sanctions and nonmonetary sanctions prohibiting the plaintiff from initiating any civil actions against the defendants or associated individuals without the representation of a licensed attorney or leave of Court.

II. Legal Standard for Fed. R. Civ. P. 11 Sanctions

Rule 11 states that a court may impose appropriate sanctions upon attorneys, law firms, or parties that have falsely represented to the court through a signed paper that a pleading or motion is not presented for an improper purpose such as harassment or to cause unnecessary delay, that the legal claims contained therein are warranted by existing law and not frivolous, and that the factual contentions contained therein have, or are likely to have, evidentiary support. Sanctions are appropriate "if the paper filed ... is frivolous, legally unreasonable or without factual foundation, even though ... not filed in subjective bad faith." Zaldivar v. City of Los Angeles, 780 F.2d 823, 831 (9th Cir. 1986).

Pro se status does not exempt a litigant from Rule 11 sanctions if they are so warranted. See Warren V. Guelker, 29 F.3d 1386, 1389-90 (9th Cir. 1994). An objective standard of reasonableness is applied to determine whether a litigant has met their Rule 11 Duties. See G.C. and K.B. Investments, Inc. v. Wilson, 326 F.3d 1096, 1109 (9th Cir. 2003). The purpose of Rule 11 is to deter baseless filings in the federal court system. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990). In achieving this purpose, courts balance competing concerns, "the desire to avoid abusive use of the judicial process and to avoid chilling zealous advocacy." Hudson v. Moore Bus. Forms, Inc., 836 F.2d 1156, 1159-60 (9th Cir. 1987).

III. Discussion

The defendants contend that sanctions are appropriate because the plaintiff's claims were filed to harass the defendants and are not warranted under existing law.

Irrespective of the merits of the plaintiff's claims, his papers suggest that he genuinely believes that he has suffered legal wrongs at the hands of the defendants and has brought suit to redress those wrongs. Therefore, the Court finds that the plaintiff did not file his complaint with the sole purpose of harassing the defendants.

Additionally, the Court cannot say at this time that the plaintiff's claims are entirely unsupported by existing law. For example, the Court dismissed one of the plaintiff's Title VII

claims on grounds that he had failed to exhaust his administrative remedies. The merits of this claim were never addressed. Similarly, the Court did not address the merits of the plaintiff's state law claims, but dismissed them for lack of subject matter jurisdiction.

Further, because an objective standard is applied to determine whether a litigant has met his Rule 11 duties, "(t)he key question in assessing frivolousness is whether a complaint states an arguable claim—not whether the pleader is correct in his perception of the law...." Hudson, 836 F.2d at 1159. Some of the plaintiff' claims may have been dismissed with prejudice, but were nevertheless "arguable." For example, the plaintiff sought to reassert certain claims that had been released in the Settlement Agreement on grounds that he had entered into that agreement under coercion. Specifically, he argued that the defendants forced him into the agreement by exercising undue economic pressure and taking advantage of the plaintiff's difficult economic situation. The Court rejected the plaintiff's arguments and dismissed the corresponding claims because he had failed to allege facts amounting to coercion. However, the plaintiff's argument that he had been forced into the Settlement Agreement was not so objectively unreasonable as to warrant sanctions.

Finally, although a number of the plaintiff's other claims were clearly without merit and were dismissed with prejudice, the

Court must carefully consider the risk of chilling meritorious claims before issuing Rule 11 sanctions. Given the plaintiff's pro se status and the nature and complexity of the claims that he has attempted to assert, the Court finds that the risk of chilling potentially meritorious claims outweighs any beneficial deterrent effect that sanctions might have in this case. Accordingly, the Court denies the defendants' motion for sanctions.

The Court warns the plaintiff that if he brings any future claims in federal court that are unsupported by law or fact he may expose himself to sanctions, including significant monetary penalties. The Court advises the plaintiff to carefully research and consider any future claims before filing them.

IV. Conclusion

For the foregoing reasons, the Court denies the defendants' motion for sanctions.

IT IS SO ORDERED.

Dated: July 19, 2005

DEAN D. PREGERSON
United States District Judge

PETITION FOR RE-HEARING

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(2)

Supreme Court, U.S.
FILED
JUN 30 2009
OFFICE OF THE CLERK

Docket No: 08-1220

United States Supreme Court

Glenn Henderson
Plaintiff

v.

Dr. Robertson and Highsmith-Rainey
Memorial Hospital
Defendants

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth
District

Petition for Rehearing

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Grounds for Rehearing

It is not equal protection if other people are allowed to file cases, especially similar cases, many years or decades after an incident. I have always remembered my incident but never understood the harm and trouble it caused me. I thought it was just a bad memory, like everyone has. I am in a protected group because of my disability from the incident.

There has been a new case and new law about discrimination in pay for women. I read that Justice Ginsburg advocated for a new law related to that. The law allows for a case to include claims of unequal pay that happened years or decades ago that women might not have known about for a long time. I hope for similar protection about harm I did not realize the cause of until many years later.

I keep reading about sexual abuse cases involving priests and other abuse or injury cases that involved incidents from long ago. Any abuse or harm caused to a child should be able to be brought to court at any time, especially if someone does not remember or does not understand what happened or the effects of what happened. In February 2009, I read that a campus minister at Crespi High School in Encino, CA was being investigated by police about inappropriate conduct in the 1990's that did not involve sexual abuse. In February 2009, I read that W.R. Grace was indicted for asbestos harm in Libby, MT that went back to the 1970's and 1960's. W.R. Grace was later acquitted. In February 2009, Geronimo's descendants sued Yale University and the federal government for the remains of Geronimo that the plaintiffs claimed were stolen in 1918. In February 2009, I read that Elgin Baylor had sued the Los Angeles Clippers for decades long racist behavior.

In February 2009, I read that an Orange County CA priest was sued for alleged molestation in 1994-95, and the Costa Mesa, CA police were investigating. The case is Kirrer v. Lyons. I read in March 2009 that the Ninth Circuit Court of Appeals ruled the Vatican could be sued for alleged sexual abuse by clergy that a plaintiff claimed happened in the 1960's. In November 2008, the Sixth Circuit allowed a case by three men against the Vatican to move forward. I read in March 2009 that two brothers were suing over alleged sexual abuse that happened at a Wasco, CA church between 1959 and 1973. The case went to trial. The jury decided there was not enough evidence to conclude that the diocese knew about the abuse. The diocese did not dispute that there was sexual abuse. In April 2009, I read that a 45 year old ex-Catholic priest sued in Santa Ana, CA over abuse by a priest when the plaintiff was 15-18 years old. I read that a case was filed on June 18, 2009 against the Roman Catholic Archdiocese of Los Angeles by a 32 year old man, who alleged he was sexually abused by a priest at age 9 or 10.

Doctors are bound by an oath to do no harm. Hospitals are or should be, too. I now live in the city where the defendant hospital is located. The hospital could easily help me with counseling or other treatment. I have sought help at a hospital that is a part of a county hospital system that the defendant hospital is a part of. I cannot afford to pay much. I cannot afford to go very often or as often as I would like. I have not been helped much when I have gone. I keep feeling worse. They have tried to help. I like having someone to talk to. Hospitals are not supposed to deny helping someone, who needs help. The defendant hospital has stated that. I need help. I have asked the hospital for help in getting disability help. They have not helped with or attempted that. I have

been diagnosed with post-traumatic stress disorder, anxiety, disorder, and depression. The anxiety, fear, and anger that I have are often intense. I am afraid to leave my house. I have agoraphobia. I cannot find a job.

I wondered if the defendants had to assert that the statute of limitations had passed. They did not. The judge did. The defendants were never served in district court. The hospital has been served for appeals court and for petitioning this court. They know about my situation and will not help. They know my address is in the same town where they are. I doubt if helping me would cost the hospital much, if anything. I imagine that not all therapists have patients all forty hours a week. They could probably fit me in one to three hours a week, especially considering the hospital caused the harm, even though it was many years ago. I doubt if the doctor or anyone else possibly involved are still working at the hospital now.

The district court ruled that the statute of limitations had passed and also said the court did not have jurisdiction. The court dismissed the case. A court should not and has no right to dismiss a case, if it does not have jurisdiction. I filed the case in California, where I lived at the time, and the incident happened in North Carolina.

In her dismissal that is in the petition's appendix, District Judge Collins referred to an admonishment to me by Judge Pregerson about researching my claims. He had dismissed claims that he mistakenly thought were or might be from a previous case, even though I clearly showed the dates and events were different. He dismissed supposed claims against a person, who was not listed as a defendant but had been on the previous case. Surprisingly, she did not mention she had given me a similar admonishment in a previous

case. She mistakenly ruled that retaliation by a former employer was not against Title VII. She ruled Section 1983 did not apply to people at Sony. I argued that because I had gone to the district attorney's office for help, and they did not help, then Section 1983 could apply to Sony.

I have the right to ask for a new law or change in an old law. I am doing that. A law should protect someone in a situation like mine.

I hope this court will order the hospital to do something. Causing all this stress and damage to me is like assault and battery. It is like some torture. Stress can lead to death or early death. Death, including, death many years later, that is caused by a crime is or can be murder. I have severe fear of and severe anxiety about everyday life and also get very angry. I have thoughts of death. I feel I need to fight as long as I can until I can get some help. I started to say I can't live like this, but I am living like this. Figuratively, I can't. I would like to at least get some declaratory relief about what I can do to get some help.

Attorneys of Record

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Certification

I certify that the petition is presented in good faith and not for delay. The grounds are limited to circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.